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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4962 OF 2005

Mr. Girish V. Gandhi & Anr. ... Applicants

Vs.

State of Maharashtra & Ors. ... Respondents

Mr. Jayesh Bhatt for the petitioners.

Mr. D.R. More, A.P.P. for the State.

Mr. A.M. Saraogi for respondents 2 and 3.

CORAM: SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED: 10TH OCTOBER 2005.

P.C.:-

1. The applicants are the members of Vasundhara Co-operative Housing Society Limited. It appears that they had entered into agreements for purchase of one flat each with the said Society. The said Society had issued share certificates to the applicants in respect of their respective flats. Applicant 1 claims that he has paid Rs.2 lacs for his flat leaving a balance of Rs.1,42,500/- payable to the Society against possession. Applicant 2 has paid the entire agreed consideration of Rs.3,43,000/- for his flat. However, they have yet not got possession of their flats. The case of the applicants, in short, is that the police have not taken steps to arrest the main accused Mohan Prasad and his wife. Mohan Prasad was acting as the Chief Promoter of the said Society. He had

formed a firm of Builders and Developers in the name of M/s. Harishree Enterprises. It appears that Mohan Prasad also floated a plantation company by name Four Seasons Farms Private Limited and collected deposits from the depositors. In respect of the affairs of the said company, the Economic Offences Wing of the Maharashtra Police have registered a case vide C.R. No.43 of 2002. Admittedly, the said case is pending before the Special Court constituted under the Maharashtra Protection of Interest of Depositors Act, (for short, "the MPID Act"). In respect of the dispute involved in the instant application, another C.R. being C.R. No.67 of 2002 is also registered and the said C.R. is pending before the learned Magistrate at the Esplanade Court at Bombay. This C.R. is registered under section 406 of the Indian Penal Code.

2. The applicants' grievance is that they have still not got the possession of their respective flats though they have paid the money. In this application they have prayed that respondent 1 be directed to find out whereabouts of remaining accused in C.R. No.67 of 2002 and arrest them and investigate the matter further and respondent 1 be further directed to seize or attach or seal the remaining 18 flats in the building of Vasundhara Co-operative Housing Society Limited situated at Gokuldham, Goregaon (East), Mumbai - 400 063 and to ascertain from occupants if any of the said 18 flats as to the person/s from whom they have acquired their rights

and seize all such documents that may be produced in support of such contention and make proper report to the trial court. The applicants have also prayed that respondent 1 may be directed to seize the funds of the said Society which have been misappropriated.

3. Admittedly, the applicants have filed suits in the Co-operative Court against the Society and the Chief Promoter for the specific performance of their agreements with the Society. We have no doubt that the Co-operative Court will take care of those suits and pass such appropriate orders as may be necessary. So far as the prayer of the applicants that respondent 1 be directed to find out the whereabouts of remaining accused in C.R.No.67 of 2002 and arrest them and investigate the matter is concerned, Mr. More, the learned A.P.P. made a statement that the police are taking all necessary steps to arrest them. He has stated that recently the police have caught hold of one accused at Bangalore. He states that Mr. V.S. Dalvi, the Inspector of Police, Economic Offences Wing, Unit II, is proceeding to Delhi to arrest the main accused. We hope and trust that the police take prompt action and arrest the accused. Their prompt action is necessary in view of the seriousness of the case.

4. So far as the prayer regarding 18 flats is concerned, since the Special Court under the MPID Act as well as the learned Magistrate, Esplanade Court are seized of the

matter, the applicants will make necessary application before the said courts and, if such application is made, the said courts should consider them in accordance with law and pass appropriate orders so as to protect the interest of the applicants if a case is made out. With these directions, the application is disposed of.

(SMT. RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)